

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS CARPENTERS CENTRAL	)	
COLLECTION AGENCY, et al	)	
Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	NO. 05-10582-GAO
	)	
NORTH AMERICAN FABRICATING, CORP.,	)	
Defendant.	)	
_____	)	

PLAINTIFFS' MOTION FOR AN ORDER OF NOTICE

Plaintiffs move pursuant to Federal Rules of Civil Procedure, (h)(1) and (e)(1) for authorization of alternate means of service of process upon the corporate defendant, North American Fabricating, Corp., a Massachusetts corporation. In support of this motion, Plaintiffs state as follows:

1. On March 25, 2005, Plaintiffs Massachusetts Carpenters Central Collection Agency, et al filed this action against Defendant North American Fabricating, Corp..
2. The Middlesex County Sheriff's Department returned the summons and complaint to the Plaintiffs after diligent search was made and no person upon whom service could be made was found. The Summons returned by the Sheriff's Department with an affirmation that diligent search was made is attached.
3. Federal Rules of Civil Procedure 4(h)(1) authorizes service upon a domestic corporation in the manner proscribed by Rule 4(e)(1) which, in turn, allows for service to be made "pursuant to the law of the state in which the district court is located."
4. Under Massachusetts law, the Secretary of the Commonwealth of Massachusetts may serve process upon Massachusetts corporations, but only pursuant to an "Order of Notice" issued by the Court.

5. Thus, Mass. Gen. Laws ch. 223, §37 provides that when process cannot be served on a domestic corporation after diligent search, the court in which the action is pending may issue an “order of notice” to the corporate defendant “directing it to appear and answer within a designated period.” The Plaintiffs then deliver the Order of Notice to the Secretary of the Commonwealth, who mails the order with the process attached to the corporation's address by registered mail, return receipt requested. The Secretary of the Commonwealth then returns to the court either the return receipt or the undelivered order, either of which shall be deemed sufficient service upon the corporation. See also Mass. R. Civ. P. 4(d)(2).

6. Plaintiffs accompany this motion with a proposed order of notice, which, if issued by this Court, Plaintiffs will deliver to the Secretary of the Commonwealth.

WHEREFORE, for the foregoing reasons, Plaintiffs' motion should be granted.

Date: September 19, 2005

Respectfully submitted,  
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/s/ Christopher N. Souris  
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Central Collection Agency, et al

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ORDER OF NOTICE

Plaintiffs having moved under Federal Rules of Civil Procedure 4(h)(1) and (e)(1) for issuance of an Order of Notice authorizing service of process on defendant North American Fabricating, Corp., a Massachusetts corporation, pursuant to Mass. Gen. Laws ch. 223, Section 37 and the Court being satisfied that the process server, after diligent search, was unable to locate any one upon whom service could be made, it is hereby

ORDERED that:

1. Plaintiffs' motion for issuance of an Order of Notice is granted;
2. The Secretary of the Commonwealth of Massachusetts is authorized to serve this Order as well as the Summons and Complaint in this action, copies of which are attached to this Order, in accordance with the procedures set forth in Mass. Gen. Laws ch. 223, Section 37; and
3. Defendant shall appear and file an answer to the complaint in this action within 20 days from the date of service of the summons and complaint.

Dated: \_\_\_\_\_